#### **DEPARTMENT OF TRANSPORTATION**

Office of the Secretary

14 CFR Part 302

[Docket No. 49830]

RIN 2105-AC18

## Rules of Practice for Proceedings Concerning Airport Fees

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes specific procedural rules under which the Department of Transportation will handle complaints by air carriers and foreign air carriers for a determination of the reasonableness of a fee increase or newly established fee imposed upon the carrier by the owner or operator of an airport. It also establishes rules that would apply to requests by the owner or operator of an airport for such a determination. The final rule responds to the mandate in the recently enacted Federal Aviation Administration Authorization Act of 1994 requiring the Department to issue regulations establishing procedures for acting upon such complaints by air carriers and requests by airport owners and operators.

**EFFECTIVE DATE:** This rule is effective on February 3, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Klothe, Office of Regulation and Enforcement, Office of the General Counsel, United States Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–9307.

#### SUPPLEMENTARY INFORMATION:

# Background

This rulemaking had its origins in two related notices on the subject of Federal policy on airport rates and charges issued by the Office of the Secretary of Transportation (OST) and the Federal Aviation Administration on June 9, 1994. A jointly-issued notice entitled "Proposed Policy Regarding Airport Rates and Charges" (Proposed Policy) listed and explained the proposed Federal policy on the rates and charges that an airport proprietor can charge to aeronautical users of the airport. (59 FR 29874); a supplemental notice concerning the proposed policy was issued on October 12, 1994 (59 FR 51836). The FAA also issued a notice of proposed rulemaking entitled "Rules of Practice for Federally Assisted Airports' setting forth procedures for the filing, investigation, and adjudication of complaints against airports for alleged

violation of Federal requirements under the Airport and Airway Improvement Act of 1982, as amended, and the Anti-Head Tax Act provisions of the Federal Aviation Act (59 FR 29880); subpart J of the proposed rule provided special procedures for the expedited review of complaints by airlines involving the fees charged by an airport proprietor. Subsequently, Congress passed the

FAA Authorization Act of 1994, which was signed into law on August 23, 1994. Section 113 of the FAA Authorization Act included specific provisions for the resolution of airport-air carrier disputes concerning airport fees. The procedures contemplated by the FAA Authorization Act were substantially different from those proposed by the FAA. Accordingly, the FAA withdrew its NPRM on September 16, 1994, insofar as it applied to the resolution of the reasonableness of airport fees charged to air carriers. (59 FR 47568). However, the remaining procedures proposed in the FAA NPRM, which would apply to the various other kinds of complaints filed against airports relating to Federal requirements, are not affected by the FAA Authorization Act, and the comment period on the remaining proposals closed on December 1, 1994.

In lieu of the procedures proposed by the FAA for handling air carrier complaints about airport rates and charges, the Office of the Secretary issued a new NPRM on October 24, 1994. As contemplated by the FAA Authorization Act, the October 24 NPRM stated that the procedures contained in 14 CFR Part 302 would generally govern air carrier complaints as well as requests by airport owners or operators for a determination of the reasonableness of airports fees and charges.

## **Discussion of Comments**

The Department received twelve comments on the NPRM. They were submitted by the Air Transport Association (ATA), the Aircraft Owners and Pilots Association (AOPA), the Airports Council International—North America (ACI-NA), the American Association of Airport Executives (AAAE), the General Aviation Manufacturers Association (GAMA), the **International Air Transport Association** (IATA), Japan Airlines Company (JAL), the Los Angeles Department of Airports, the Maryland Aviation Administration, the Massachusetts Port Authority (Massport), the Metropolitan Washington Airports Authority, and the National Business Aircraft Association, Inc. (NBAA).

Although there were numerous requests for changes to particular

provisions, the comments generally expressed support for the overall concept of the proposed rule. The proposed regulatory approach, *i.e.*, consolidating all complaints as soon as the first carrier files a complaint under the new subpart, received several supporting comments and no opposition. Accordingly, the final rule follows this approach with only minor modifications. We turn now to a discussion of the issues most widely addressed in the comments. Other comments are addressed in the section-by-section analysis.

# **Party Status**

A number of commenters addressed issues involving who should be able to make use of the expedited procedures contained in the new subpart. JAL expressed specific support for our proposal to allow foreign air carriers to use the expedited procedures along with U.S. air carriers. AAAE stated that it considers this proposal acceptable, and ACI-NA also indicated that it did not object, although ACI-NA added that "a foreign air carrier, like any other carrier, which initiates or joins a case should not be allowed to pursue remedies in other forums, in order to avoid duplicative proceedings which could lead to inconsistent or conflicting results." Only the Los Angeles Department of Airports opposed including foreign air carriers. It claims that "Congress intentionally provided the expedited procedures only to U.S. carriers," and suggests that making this forum available to foreign carriers forfeits a bargaining position for the United States and contravenes the principle of international reciprocity.

The final rule adopts the proposal to allow foreign air carriers to file complaints under subpart F. As we noted in the NPRM, we anticipate that both domestic and foreign carriers will dispute airport fees they believe to be unreasonable. Since the economic and other issues involved in determining the reasonableness of a fee are essentially the same whether the complainant carrier is U.S. or foreign, it will be simpler for the carriers, the airport and the Department to make that determination in a single proceeding. Therefore, while the FAA Authorization Act was only directed at complaints by U.S. carriers, we will include foreign carriers on our own initiative.

With respect to the comment that foreign carriers filing claims under subpart F should be barred from seeking remedies in other forums, we note that the various bilateral agreements on air service between the United States and